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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,) No. CR 11-00529-1 SBA
Plaintiff,) UNITED STATES' SENTENCING
v.) MEMORANDUM
NORMAN WIELSCH,) Sentencing Date: May 20, 2013
Defendant.) Time: 1:00 P.M.
))

I. INTRODUCTION

Defendant Norman Wielsch entered into a plea agreement precluding him from seeking a sentence below the ten year mandatory minimum applicable to his narcotics conspiracy charge. Despite announcing that he is “leav[ing] the baby on the Court’s doorstep” due to this agreement, Wielsch nonetheless “requests the Court impose a sentence of home confinement.” Defendant’s Motion for Departure (Def. Mtn.) at 3. If the Court is inclined to entertain Wielsch’s request for sentence below the statutory mandatory minimum, the government asks for an opportunity to consider whether to rescind the plea agreement based on his breach. Assuming the Court is not so inclined, the government submits this Sentencing Memorandum requesting a sentence of 210 months – the high end of the advisory Sentencing Guideline range.

U.S. SENTENCING MEM.
CR 11-00529-1 SBA

II. BACKGROUND

A. Plea Agreement

On December 5, 2012, Wielsch pleaded guilty, pursuant to a plea agreement, to five counts in the Indictment: conspiracy to possess with intent to distribute and to distribute marijuana and 50 grams or more of methamphetamine (Count One), theft from programs receiving federal funds (Count Twelve), civil rights conspiracy (Counts Fourteen and Sixteen), and Hobbs Act robbery (Count Seventeen). In Paragraph 2 of the plea agreement, Wielsch admitted the following facts.

B. Offense Conduct Admitted by Wielsch in Plea Agreement

Between approximately June 2004 and February 16, 2011, Wielsch was a California Department of Justice Special Agent Supervisor and the Commander of the Central Contra Costa County Narcotics Enforcement Task Force (CNET), a regional task force operated by the California Department of Justice, Bureau of Narcotics Enforcement.

1. Narcotics Conspiracy (Count One)

Between at least November 2010 and continuing through February 16, 2011, Wielsch entered into an agreement with private investigator Christopher Butler to sell marijuana and 50 grams or more of methamphetamine. Specifically, in November 2010, Wielsch stole marijuana that CNET had seized during a search. Wielsch told Butler that he had obtained the marijuana, and that he wanted to sell it to make money before retiring. Wielsch gave Butler at least eight to ten vacuum-sealed plastic bags, each containing approximately one pound of marijuana. Butler agreed to sell the marijuana, and to split the proceeds evenly with Wielsch.

In furtherance of this agreement, in November 2010, Butler gave one of the bags of marijuana to one of his employees, C.M., to sell for \$1,500 per pound. Butler gave C.M. four more bags of marijuana to sell in December 2010 and January 2011. Butler gave Wielsch half of the proceeds from these sales.

On or about January 27, 2011, CNET officers legally seized approximately fifty pounds of higher quality marijuana. Wielsch told Butler about the seizure and asked whether he could sell some of the marijuana. On or about January 30, 2011, at Wielsch's request, Butler drove to

U.S. SENTENCING MEM.

U.S. SENTENCING

1 CNET's offices and helped Wielsch take approximately twelve pounds of the higher quality
2 marijuana and return some of the marijuana that Wielsch had previously provided to him.
3 Beginning on or about February 1, 2011, Butler gave C.M. approximately two pounds of the
4 higher quality marijuana, as well as fifteen vials of steroids that Wielsch had given Butler to sell.
5 Butler paid Wielsch approximately \$2,600 from these sales.

6 In early February 2011, Wielsch advised Butler that CNET officers had seized
7 approximately three pounds of methamphetamine, which would soon be destroyed. A few days
8 later, Butler advised Wielsch that C.M. said he had a potential buyer for the methamphetamine at
9 \$10,000 per pound. In furtherance of their agreement, on February 15, 2011, Butler met Wielsch
10 at CNET's office, drove with Wielsch to the Contra Costa County Sheriff's Evidence facility,
11 and picked up the methamphetamine. Back at Butler's office, Butler and Wielsch met up with
12 C.M. and sold him one of the packages of methamphetamine, wrapped in the form of a burrito, at
13 an agreed-upon price of \$9,800. Butler gave Wielsch \$5,000 and took \$2,500 for himself; C.M.
14 kept the remainder. Wielsch agreed that the net weight of the methamphetamine sold to C.M.
15 was approximately 435.4 grams, with purity of approximately 93.7%.

16 2. Theft from Program Receiving Federal Funds (Count Twelve)

17 As described above, on or about February 15, 2011, Wielsch knowingly and intentionally
18 stole, obtained by fraud, or otherwise without authority converted to his own use
19 methamphetamine that had been seized by CNET during a law enforcement operation. Wielsch
20 agreed that the methamphetamine was under the care, custody, and control of CNET and the
21 Contra Costa County Sheriff's Evidence facility. He further agreed that the value of the
22 marijuana and methamphetamine he took exceeded \$30,000 but was less than \$70,000, and that
23 CNET received more than \$10,000 in federal funds during the one year period of February 15,
24 2010, to February 15, 2011.

25 3. Civil Rights Conspiracy (Count Fourteen)

26 Between January 2009 and February 6, 2009, Wielsch knowingly and intentionally agreed
27 with Butler and others to deprive an individual, F.S., of his right against unreasonable searches
28 and seizures and his right against deprivation of liberty and property without due process of law.

1 As part of this conspiracy, Butler was hired by F.S.'s mother to conduct a "sting"
 2 operation against F.S. in an attempt to deter him from selling illegal drugs. Butler enlisted
 3 Wielsch and more than three other individuals, to participate in the sting, which was to involve a
 4 staged arrest of F.S. during a drug transaction in CNET's parking lot. Specifically, Butler
 5 instructed two women who were working for him to develop a relationship with F.S. and,
 6 thereafter, to arrange to have F.S. sell ecstasy to their friend for \$600. On February 6, at Butler's
 7 instruction, the women met up with F.S., arranged to have him drive his car, and accompanied
 8 him to the ecstasy sale, which occurred in the CNET parking lot. Upon their arrival, as earlier
 9 agreed upon, Wielsch drove up wearing his loaded firearm, handcuffed, and interrogated F.S.
 10 Wielsch further agreed to and did participate with Butler in searching F.S.'s pockets, car, and
 11 bedroom. Butler and Wielsch seized and maintained thousands of Xanax pills that they found
 12 during the search. At the conclusion of the search, F.S. was released from his handcuffs.

13 4. Civil Rights Conspiracy (Count Sixteen)

14 From approximately January 2010 through approximately August 2010, Wielsch
 15 knowingly and intentionally agreed with Butler to deprive persons engaged in the business of
 16 prostitution of their rights against unreasonable searches and seizures and their rights against
 17 deprivation of property without due process of law.

18 As part of this conspiracy, Wielsch found prostitutes through online advertisements, such
 19 as Craigslist and Redbook, and arranged meetings with them, usually in hotels. On at least four
 20 occasions, Butler accompanied Wielsch to meet the women at hotel rooms in San Ramon,
 21 California, and other towns in the Northern District of California. Typically, Butler went to the
 22 room and knocked, while Wielsch pushed his way in behind after the door was opened, displayed
 23 his badge, and stated that he was a law enforcement officer. Wielsch and Butler then took cell
 24 phones, money, and sometimes computers or other property from the women before they left the
 25 room. They did not issue citations or property receipts during these encounters. Butler and
 26 Wielsch split the cash proceeds from these raids. Butler retained the cell phones in his office.

27 5. Hobbs Act Robbery (Count Seventeen)

28 In or about July or August 2010, Wielsch knowingly and intentionally robbed and

1 conspired to rob two individuals, J.H. and S.P., in San Ramon, California. Specifically, as part
 2 of their conspiracy to take cell phones and money from prostitutes, Wielsch and Butler went to a
 3 room at the Homestead Suites hotel in San Ramon where they met a prostitute and her madam,
 4 J.H. Wielsch and Butler identified themselves as police officers, and took cash, two cell phones,
 5 and a set of car keys from J.H. and a man with whom she was traveling, S.P. Wielsch agreed that
 6 they took more than \$10,000 collectively from J.H., S.P., and others in the course of their
 7 prostitution robberies. Wielsch further agreed that these robberies affected interstate commerce
 8 because they used Craigslist and other websites to identify their victims, and because many of the
 9 cell phones they stole were manufactured out of state, among other reasons.

10 **C. Additional Offense Conduct Provable by Government**

11 In addition to all the facts to which Wielsch agreed as part of his plea, the government is
 12 prepared to prove that, on February 11, 2011, Butler called Wielsch to determine when they
 13 could obtain methamphetamine that Wielsch told him CNET had seized. The call was
 14 intercepted through a wire tap order issued by the state court. Wielsch said there were three to
 15 four pounds of “the crystal stuff.” Butler advised he had a buyer for “10k” per pound. Wielsch
 16 laughed, and then warned Butler to make sure that the buyer was “not a cop.” Observing that
 17 “this is a whole different level,” Wielsch said that he and Butler could pick up the drugs for
 18 destruction and go to the dump on Tuesday. In a follow-up call, Wielsch explained that one
 19 pound of the methamphetamine was “in a burrito” and “two, two and a half” were in tupperware.
 20 Later that evening, Wielsch called Butler, joking about the small denominations of C.M.’s
 21 payment for the prior marijuana deal.

22 At the behest of the California Department of Justice, C.M. wore a wire and a camera
 23 during the methamphetamine deal on February 15, 2011. The video footage shows Butler count
 24 out \$5000, hand it over to Wielsch for him to count, and hand the remaining money back to
 25 Marino. The footage then shows Butler retrieving a “burrito” of methamphetamine, wearing
 26 gloves to avoid fingerprints. Wielsch’s voice is audible. Marino then left with the white bag
 27 containing the burrito. Further footage shows Marino paying Butler an additional \$2,500 later
 28 that day – Butler’s cut of the proceeds.

D. Agreements as to Sentencing

The terms of the plea agreement provide, among other things, that Wielsch agrees “not to seek a sentence below the mandatory minimum, ten years” (Plea ¶ 7), and that he will pay a \$150,000 fine (Plea ¶ 9). In exchange, the government agreed to recommend the Guidelines calculations set out in Paragraph 7, “unless the defendant violates the terms of the Agreement above or fails to accept responsibility.” The Guidelines calculation is as follows:

Narcotics Conspiracy (Count 1)

a.	Base Offense Level, U.S.S.G. § 2D1.1(a)(5):	34
b.	Specific offense characteristics:	
	Aggravating role, U.S.S.G. § 3B1.1(c):	+2
	Abuse of position of trust, U.S.S.G. § 3B1.3:	+2
c.	Adjustments:	0
d.	Adjusted offense level:	38

Drug Theft (Count 12)

a.	Base Offense Level, U.S.S.G. § 2B1.1(a)(2):	6
b.	Specific offense characteristics: Loss >\$30,000, U.S.S.G. § 2B1.1(b)(1)(D):	+6
c.	Adjustments:	0
d.	Adjusted offense level:	12

Civil Rights Conspiracy (Count 14)

a.	Base Offense Level, U.S.S.G. § 2H1.1(a)(2):	12
b.	Specific offense characteristics: Under color of law, U.S.S.G. § 2H1.1(a)(2):	+6
c.	Adjustments:	0
d.	Adjusted offense level:	18

Civil Rights Conspiracy (Count 16)

a. Base Offense Level, U.S.S.G. § 2H1.1(a)(1): 23
Based on offense level for Count 17

b.	Specific offense characteristics:	
	Under color of law, U.S.S.G. § 2H1.1(b)(1):	+6
c.	Adjustments:	0
d.	Adjusted offense level:	29

Hobbs Act Robbery (Count 17)

a.	Base Offense Level, U.S.S.G. § 2B3.1(a):	20
b.	Specific offense characteristics: Loss >\$10,000, U.S.S.G. § 2B3.1(b)(7)(B):	+1
c.	Adjustments: Abuse of position of trust, U.S.S.G. § 3B1.3:	+2
d.	Adjusted offense level:	23

Grouping

	<u>Level</u>	<u>Units</u>
Group I (Counts 1 & 12)	38	1
Group II (Count 14)	18	0
Group III (Count 16 & 17)	29	0
		1
		+0

a.	Grouped Offense Level, U.S.S.G. §§ 3D1.1-3D1.4:	38
b.	Acceptance of Responsibility:	-3
c.	Total offense level:	35

The government acknowledges that the PSR determined Counts 1 and 12 do not group,

but this does not affect the overall Guidelines calculation.

III. ARGUMENT

A. 18 U.S.C. § 3553(a)

23 Title 18, United States Code, Section 3553(a) requires the court to “impose a sentence
24 sufficient, but not greater than necessary” after considering “the nature and circumstances of the
25 offense and the history and characteristics of the defendant;” the need for the sentence to reflect
26 the seriousness of the offense, promote respect for the law, provide just punishment, afford
27 adequate deterrence, protect the public, and provide the defendant with training, medical care, or
28 other correctional treatment; the Sentencing Guidelines; and the need to avoid unwarranted

1 sentencing disparity between similarly situated defendants. Taking together all of these factors,
 2 the government asks the Court to impose a sentence of 210 months' imprisonment, a \$150,000
 3 fine, five years' supervised release, and a \$500 special assessment.

4 1. Nature and Circumstances of the Offense; Seriousness of the Offense; Promotion
 5 of Respect for the Law; Just Punishment

6 The nature and circumstances of the offenses are egregious. Wielsch was the head of a
 7 state-sponsored narcotics enforcement team. He used his position of trust to steal
 8 methamphetamine and marijuana seized by the team, he enlisted others to sell these drugs, he
 9 kept 50% – the greatest share – of the proceeds, and he carried a firearm during at least the
 10 methamphetamine sale. He also used his position of trust to rob prostitutes of more than \$10,000
 11 – displaying his badge and announcing he was law enforcement – and depriving them of their
 12 civil rights. And he used his position of trust – wearing his loaded service firearm and using
 13 CNET's parking lot – to deprive a young man of his civil rights by falsely arresting and
 14 handcuffing him; searching his person, car, and bedroom; and seizing thousands of Xanax pills
 15 found during the search.

16 Additionally, the relevant conduct includes the counts in the Indictment to which he did
 17 not plead guilty – the possession and distribution of marijuana and methamphetamine (Counts
 18 Two, Four, and Six); the theft of marijuana from programs receiving federal funds (Counts Ten
 19 and Eleven); and extortion under color of official right, arising out of taking protection money
 20 from an illicit massage parlor (Count Fifteen).

21 The seriousness of this conduct demands a serious sentence, to assure just punishment,
 22 promotion of respect for the law, and adequate deterrence.

23 2. History and Characteristics of the Defendant; Need for Medical Treatment

24 a. Medical Characteristics

25 During all of the offense conduct, Wielsch was a Special Agent Supervisor of the
 26 California Department of Justice and the Commander of the regional drug task force CNET. He
 27 did not have a violent or particularly troubled childhood. In or after 1999, he was diagnosed with
 28 peripheral neuropathy, with complications from Charcot-Marie-Tooth disease, a disorder

1 involving loss of muscle tissue and sensation. As a result of these health problems, Wielsch had
 2 numerous foot surgeries and suffered erectile dysfunction. As he continued to lose feeling in his
 3 hands, Wielsch developed difficulty handling his service firearm. In 2010, Wielsch's health
 4 problems caused him to fall during an attempted law enforcement entry of a home. Wielsch did
 5 not step down from his active duties but did contemplate suicide. (PSR ¶ 88.)

6 To conceal his failing health from his colleagues and superiors, Wielsch "lied" because
 7 "he did not want to admit what was happening to him" and take a desk job or retire. (PSR ¶ 83.)
 8 While Wielsch's lies may have protected his own ego, they undoubtedly put his colleagues at
 9 increased risk.

10 The Bureau of Prisons has extensive medical facilities and capabilities, and is trained to
 11 handle all manner of physical and mental health problems. Wielsch's physical and mental health
 12 problems can be dealt with in the course of him serving his sentence. They do not warrant a
 13 downward departure or otherwise reduced sentence.

14 b. Other Characteristics

15 The government is concerned about what appears to be a deflection of responsibility. In
 16 his interview with Pretrial Services, Wielsch reported that he participated in the prostitution
 17 robberies because Butler had videotaped Wielsch's sexual encounter with two women and
 18 threatened to send it to Wielsch's wife. Neither Wielsch nor his attorney ever told the United
 19 States this, despite extensive discussions between the United States and Wielsch regarding his
 20 involvement in the prostitution robberies, nor claimed his involvement in the robberies was the
 21 result of duress.

22 Similarly, in his Sentencing Memorandum, Wielsch asserts that his conduct was the result
 23 of mental disease" (Def. Mtn. at 6-7, 10-16, 19-20), that he fell "prey" to Butler, and that he was
 24 not "a leader or instigator," (Def. Mtn. at 5, 13). Although Wielsch argues that "[o]nly mental
 25 disease can explain" his criminal conduct (Def. Mtn. at 5), the United States can think of another
 26 explanation, one that motivates many other criminals, including other corrupt police officers:
 27 greed. Both Wielsch's greed and his leadership role are apparent in the recorded his phone calls
 28 with Butler, in which Wielsch laughs when Butler says has a buyer for "10k" per pound of

1 methamphetamine, warns Butler to make sure that the buyer is “not a cop,” observes that “this is
 2 a whole different level,” and invites Butler to accompany him to pick up the drugs. Wielsch’s
 3 leadership role and greed are further apparent in the division of proceeds from Wielsch’s drug
 4 thefts and sales – Wielsch got 50%, Butler got 25%, and C.M. got 25%.

5 Wielsch also blames his prior attorney for his having been remanded to custody upon
 6 entry of his guilty plea, based at least in part on counsel’s failure to advise the Magistrate Judge
 7 of his medical conditions and his performance of “good works.” Def. Mtn. at 12. In so arguing,
 8 Wielsch ignores that remand to custody was mandatory under 18 U.S.C. § 3143(a)(2). His
 9 medical conditions and any other personal characteristics were irrelevant.

10 Based on Wielsch’s personal history and characteristics, a 210-month sentence at the
 11 high-end of the Guideline range is appropriate.

12 3. Avoidance of Unwarranted Disparity

13 Contrary to Wielsch’s suggestion, sentencing him to 210 months does not result in a
 14 disparity with any similarly situated defendant. Butler pleaded guilty pursuant to a cooperation
 15 agreement, and he cooperated before Wielsch decided to plead guilty. Butler is thus not similarly
 16 situated, and his sentence received pursuant to a 5K agreement is irrelevant.

17 B. **18 U.S.C. § 3553(f)**

18 Wielsch argues that he is entitled to a lesser sentence pursuant to the “safety valve,” 18
 19 U.S.C. § 3553(f). Not so. The safety valve is not available to any defendant who was “an
 20 organizer, leader, manager, or supervisor of others in the offense, as determined under the
 21 sentencing guidelines.” 18 U.S.C. § 3553(f)(4). Wielsch agreed in Paragraph 7 of his plea
 22 agreement that a two-level enhancement was appropriate for his aggravated role in the narcotics
 23 conspiracy, under U.S.S.G. § 3B1.1(c). Section 3B1.1(c) applies to one who was “an organizer,
 24 leader, manager, or supervisor” in the offense.

25 Moreover, the finding that Wielsch was an organizer, leader, manager, or supervisor in
 26 the narcotics conspiracy is supported by the facts to which Wielsch agreed in Paragraph 2 of his
 27 plea agreement. He stole marijuana in November 2010 and only later told Butler about it. He
 28 obtained double the proceeds that Butler and C.M. obtained. He told Butler about CNET’s

U.S. SENTENCING MEM.

CR 11-00529-1 SBA

January 2011 seizure of marijuana, and asked Butler to sell some of it. And, in intercepted calls, he warned Butler to make sure that the buyer for the methamphetamine was “not a cop” and invited Butler to accompany him to pick up the drugs.

The safety valve is also unavailable to a defendant who has not “truthfully provided to the Government all information and evidence that defendant has concerning the offense or offense that were part of the same course of conduct or of a common scheme or plan.” 18 U.S.C. § 3553(f)(5). The United States does not believe that Wielsch has truthfully provided it with all information he has regarding offenses in the same course of conduct as the offenses to which he has pleaded guilty. Specifically, Wielsch denies having participated in the Hobbs Act extortion involving illicit massage parlors, as charged in Count Fifteen of the Indictment. While this conduct was not included in Wielsch’s plea agreement, the government nonetheless has credible evidence that Wielsch did, under color of official right, conspire to obtain money from an illicit massage parlor in exchange for shielding it from law enforcement action.

For these reasons, the government would not recommend application of the safety valve. There is no need for an evidentiary hearing.

IV. CONCLUSION

For the foregoing reasons, the United States asks the Court to sentence the defendant, Norman Wielsch, to an imprisonment term of 210 months; a supervised release term of five years; a \$150,000 fine; and \$500 in special assessments.

DATED: May 13, 2013

Respectfully submitted,

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/S/

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U.S. SENTENCING MEM.
CR 11-00529-1 SBA